

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
3 JONATHAN JACKSON, No. C 09-1785 CW (PR)
4 Plaintiff,
5 v.
6 B. SULLIVAN, et al.,
7 Defendants.
8 ORDER GRANTING DEFENDANTS'
9 PLEADINGS; DENYING AS MOOT
10 DEFENDANTS' MOTION TO STAY
11 DISCOVERY; DENYING
12 PLAINTIFF'S MOTIONS FOR
13 APPOINTMENT OF COUNSEL AND TO
14 ISSUE SUMMONS
15
16 Plaintiff, a death row prisoner incarcerated at San Quentin
17 State Prison (SQSP), has filed this 42 U.S.C. § 1983 action
18 seeking injunctive relief and damages. Defendants SQSP Warden
19 Robert L. Ayers and Appeals Examiner B. Sullivan have filed a
20 motion for judgment on the pleadings, Plaintiff has opposed the
21 motion and Defendants have filed a reply.¹ For the reasons
22 discussed below, the motion is GRANTED and the action is DISMISSED
23 without leave to amend.

18 DISCUSSION

19 A. Standard of Review

20 Federal Rule of Civil Procedure 12(c) provides that "after
21 the pleadings are closed -- but early enough not to delay trial --
22 a party may move for judgment on the pleadings." Judgment on
23 the pleadings is proper when, "taking all allegations in the
24 pleadings as true, the moving party is entitled to judgment as a

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26
27 ¹SQSP Appeals Coordinator V. Kelly has not been served.
28 Because this order dismisses the action, Plaintiff's motion to
issue summons to serve Kelly is DENIED.

1 matter of law." Stanley v. Trustees of the Cal. State Univ., 433
2 F.3d 1129, 1133 (9th Cir. 2006). On the face of the pleadings,
3 the moving party must clearly establish "that no material issue of
4 fact remains to be resolved." Hal Roach Studios, Inc. v. Richard
5 Feiner & Co., Inc., 896 F.2d 1542, 1551 (9th Cir. 1989).

6 A Rule 12(c) motion is "functionally identical" to a Rule
7 12(b) motion. Dworkin v. Hustler Magazine, Inc., 867 F.2d 1188,
8 1192 (9th Cir. 1989). Thus, the same standard of review applies
9 to both. Under both rules, "the allegations of the non-moving
10 party must be accepted as true, while the allegations of the
11 moving party which have been denied are assumed to be false." Hal
12 Roach Studios, Inc., 896 F.2d at 1550. A court need not accept as
13 true, however, unreasonable inferences, unwarranted deductions of
14 fact, or conclusory legal allegations cast in the form of factual
15 allegations. See Western Mining Council v. Watt, 643 F.2d 618,
16 624 (9th Cir. 1981).

17 In deciding such a motion, a court may properly consider
18 material submitted as part of the complaint, documents that are
19 not part of the complaint but are referred to extensively in the
20 complaint and considered authentic by all parties, and materials
21 that are part of the public record and thus subject to judicial
22 notice. See United States v. Ritchie, 342 F.3d 903, 908-09 (9th
23 Cir. 2003).

24 B. Plaintiff's Claims

25 The Court conducted a preliminary screening of Plaintiff's
26 original complaint pursuant to 28 U.S.C. § 1915A(a) and liberally
27 construed the allegations therein as an attempt by Plaintiff to
28 state three claims for relief, all pertaining to his designation

United States District Court
For the Northern District of California

1 as a death row prisoner reassigned from Grade A status to the more
2 restrictive Grade B/Privilege Group D (Grade B) status.
3 Specifically, the Court construed the complaint as raising the
4 following claims: (1) the Grade B designation violates due process
5 because Plaintiff was not afforded the procedural protections
6 provided to non-death-row prisoners who are reassigned to more
7 restrictive conditions of confinement, (2) the designation
8 violates his right to equal protection, and (3) the designation
9 violates his rights under the Eighth Amendment. The Court
10 dismissed the complaint with leave to amend, finding that
11 Plaintiff had failed to allege sufficient facts to state a claim
12 for relief under any of the above three theories and that he had
13 failed to link Defendants Sullivan and Kelly to his allegations.
14 Docket no. 9.

15 Thereafter, Plaintiff filed an amended complaint; the Court
16 found Plaintiff's allegations, when liberally construed, cured the
17 pleading deficiencies with respect to the due process and equal
18 protection claims, and ordered those claims served on Defendants.
19 Because Plaintiff had not alleged facts in the amended complaint
20 pertaining to his Eighth Amendment claim, the Court dismissed that
21 claim without prejudice. Docket no. 12.

22 When reviewing the legal sufficiency of the amended
23 complaint, the Court relied solely on the allegations therein.
24 Specifically, the Court relied on Plaintiff's allegations
25 concerning the language of various prison regulations, a decision
26 made by the classification committee to retain him on Grade B
27 status, and the content of the administrative appeals he filed
28 challenging his designation as a Grade B prisoner and Defendants'

1 responses thereto. Plaintiff did not attach the regulations,
2 classification decision, administrative appeals or any other
3 documents to either his original or amended complaint.

4 In support of their motion for judgment on the pleadings,
5 Defendants have attached copies of the classification decision and
6 administrative appeals to which the complaint refers. In ruling
7 on the motion, the Court considers these documents and also takes
8 judicial notice of the language of the prison regulations relied
9 upon by Plaintiff in the amended complaint.

10 C. Analysis

11 1. Due Process Claim

12 Plaintiff claims that his right to due process was violated
13 when, after he was found guilty of a disciplinary violation,
14 Defendants chose not to sentence him to a determinate term of
15 punishment on Grade B status but, instead, relied upon the
16 disciplinary violation as justification to reassign him
17 permanently to Grade B status. He analogizes this to being
18 assigned to an indeterminate term in administrative segregation or
19 the secured housing unit (SHU) for non-death-row prisoners. He
20 maintains that if he had received a determinate term of punishment
21 on Grade B status he would have been able to return to Grade A
22 status when the term ended, but because he has been reassigned to
23 Grade B status he cannot return to Grade A status until the Unit
24 Classification Committee (UCC) and Institutional Classification
25 Committee (ICC) allow him to do so, and that the criteria used to
26 guide their decisions are wholly discretionary.

27 The requirements of due process apply only to the deprivation
28 of interests encompassed by the Fourteenth Amendment's protection

United States District Court
For the Northern District of California

1 of liberty and property. Board of Regents v. Roth, 408 U.S. 564,
2 569 (1972). A protected liberty interest may be created either by
3 the Due Process Clause of its own force or by states through
4 statutes or regulations. Sandin v. Connor, 515 U.S. 472, 483-84
5 (1995). The hardship associated with administrative segregation,
6 such as loss of recreational and rehabilitative programs or
7 confinement to one's cell for a lengthy period of time, is not so
8 severe as to violate the Due Process Clause itself. See Toussaint
9 v. McCarthy, 801 F.2d 1080, 1091-92 (9th Cir. 1986) (applying
10 Hewitt v. Helms, 459 U.S. 460 (1983)).

11 A deprivation authorized by state law may amount to
12 deprivation of a protected liberty interest if the deprivation is
13 one of "real substance," that "imposes atypical and significant
14 hardship on the inmate in relation to the ordinary incidents of
15 prison life," Sandin, 515 U.S. at 484, or "will inevitably affect
16 the duration of [a] sentence," id. at 487. The Ninth Circuit
17 holds that when prison officials initially determine whether a
18 prisoner is to be segregated for administrative reasons due
19 process requires that they comply with the following procedures:
20 (1) they must hold an informal non-adversarial hearing within a
21 reasonable time after the prisoner is segregated, (2) the prisoner
22 must be informed of the charges against him or the reasons
23 segregation is being considered, and (3) he must be allowed to
24 present his views. See Toussaint, 801 F.2d at 1100.
25 Additionally, "some evidence" must support the decision to place
26 an inmate in segregation for administrative reasons. Id. at 1104.

27 Defendants argue that Plaintiff fails to state a due process
28 claim because he has not alleged facts that show either that

United States District Court
For the Northern District of California

1 reassignment to Grade B status is a deprivation of "real
2 substance," or that he has not been provided with constitutionally
3 adequate process.²

4 The Court need not decide whether Plaintiff has alleged facts
5 that show that reassignment to Grade B status amounts to a
6 deprivation of real substance. Even if he has, he has failed to
7 allege facts that show he has been denied due process.

8 Specifically, he does not allege that he was not provided with
9 notice and a hearing at which he was allowed to present his views,
10 or that there was not some evidence to support the decision to
11 place him on Grade B status. Rather, he alleges the following: he
12 initially was placed on Grade B status on April 29, 2006, when he
13 was charged with a rules violation; on January 1, 2007, he was
14 found guilty of a lesser offense, specifically, the serious rules
15 violation of conspiracy to murder a peace officer; on February 1,
16 2007, he appeared before the ICC and was informed that he would
17 not be assessed a determinate term of punishment on Grade B status
18 but, instead, would be reassigned to Grade B status and reviewed
19 every ninety days to determine whether he could be returned to
20 Grade A status. Notably, Plaintiff alleges that he was assigned
21 Grade B status because of the "rule violation [he] was found
22 guilty of." (Am. Compl. at 7.)

23 Nor does Plaintiff allege that Defendants have failed to
24 review his continued Grade B status. When an inmate has been
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26 ² Whether Plaintiff's reassignment to Grade B status will
27 inevitably affect the duration of his sentence, see Sandin, 515
28 U.S. at 487, is not at issue because Plaintiff has been sentenced
to death.

1 placed in administrative segregation, prison officials must engage
2 in some sort of periodic review of his confinement. See Hewitt,
3 459 U.S. at 477 n.9; Toussaint, 801 F.2d at 1101. Here, Plaintiff
4 acknowledges that he has been provided with periodic reviews,
5 every ninety days, by the UCC, and has received regular reviews by
6 the ICC. Additionally, he acknowledges that, at these reviews, he
7 has been provided with the opportunity to ask questions, has been
8 informed of the reasons for the reviewing committee's decision to
9 retain him on Grade B status, and has been able to present his
10 views. Consequently, he has been provided with at least the
11 procedural protections to which he is entitled. See Wilkinson v.
12 Austin, 545 U.S. 209, 217, 224 (2005) (finding due process
13 satisfied by indeterminate administrative segregation policy that
14 requires periodic review of inmate's files every thirty days and
15 annual review at which inmate is allowed to appear and present his
16 views).

17 Based on the foregoing, the Court finds Plaintiff's
18 allegations fail to state a claim upon which relief may be granted
19 for the violation of due process. Accordingly, Defendants' motion
20 for judgment on the pleadings is GRANTED on this claim. Because
21 the Court finds amendment would be futile, the claim is dismissed
22 without leave to amend.

23 2. Equal Protection Claim

24 Plaintiff alleges that Defendants are violating his right to
25 equal protection by using highly discretionary procedures to place
26 and retain death row prisoners on Grade B status that are
27 different than those used to place and retain non-death-row
28 prisoners on restrictive status in administrative segregation and

United States District Court
For the Northern District of California

1 the SHU. Specifically, he alleges that regulations promulgated by
2 the California Department of Corrections and Rehabilitation
3 require that non-death-row prisoners who are found guilty of a
4 serious rules violation be sentenced to a determinate term in the
5 SHU and then returned to their prior housing status after the term
6 is served, while death row prisoners do not receive a determinate
7 term of punishment but instead are placed on Grade B status for an
8 indeterminate term and without specific criteria for release.

9 "The Equal Protection Clause of the Fourteenth Amendment
10 commands that no State shall 'deny to any person within its
11 jurisdiction the equal protection of the laws,' which is
12 essentially a direction that all persons similarly situated should
13 be treated alike." City of Cleburne v. Cleburne Living Center,
14 473 U.S. 432, 439 (1985) (quoting Plyler v. Doe, 457 U.S. 202, 216
15 (1982)). The different treatment of unlike groups does not
16 support an equal protection claim. Thornton v. City of St.
17 Helens, 425 F.3d 1158, 1168 (9th Cir. 2005). In order for a
18 prisoner to state an equal protection claim when challenging his
19 treatment in contrast to that of other prisoners, he must allege
20 that his treatment is invidiously dissimilar to that received by
21 other prisoners. See More v. Farrier, 984 F.2d 269, 271-72 (8th
22 Cir. 1993).

23 Defendants argue that Plaintiff's allegations fail to state a
24 claim upon which relief may be granted because death row prisoners
25 are not situated similarly to non-death-row prisoners. Plaintiff
26 maintains that the two groups are similarly situated because
27 placing a death row prisoner on Grade B status is equivalent to
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1 placing a non-death-row prisoner in administrative segregation or
2 the SHU. The Court need not decide whether death row and
3 non-death-row prisoners are similarly situated in this regard;
4 even if they are, the inferences drawn by Plaintiff from the
5 regulatory language are unreasonable and his factual allegations
6 are therefore unsubstantiated.

7 As an initial matter, and contrary to Plaintiff's
8 allegations, the regulations do not require that a non-death-row
9 prisoner found guilty of a serious rule violation be sentenced to
10 a determinate term in the SHU. Rather, they provide that the
11 prisoner be assessed a credit forfeiture. 15 Cal. Code Regs.
12 (C.C.R.) § 3315(f)(3). In particular, a prisoner found guilty of
13 conspiracy to murder a peace officer -- the serious rules
14 violation of which Plaintiff was found guilty -- is to be assessed
15 a credit forfeiture of 151-180 days. 15 C.C.R. § 3323(c)(8).
16 However, credit forfeitures can be assessed only against prisoners
17 serving determinate terms. 15 C.C.R. § 3323(a). Additionally,
18 after a rules violation has been adjudicated against a
19 non-death-row prisoner, a serious disciplinary action can be
20 referred to a classification committee to determine whether the
21 prisoner should be assigned to a different work or housing group.
22 15 C.C.R. § 3315(g). The classification regulations provide that
23 a "determinate period of confinement in SHU may be established for
24 an inmate found guilty of a serious offense," or that an inmate
25 can be assigned to an indeterminate SHU term if he is "deemed to
26 be a threat to the safety of others or the security of the
27 institution." 15 C.C.R. § 3341.5(c)(1) & (c)(B)(1).

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1 Like non-death-row prisoners found guilty of a serious rules
2 violation who are not serving determinate terms of imprisonment,
3 Plaintiff is ineligible for credit forfeiture as a disciplinary
4 measure. And, like non-death-row prisoners who have had a serious
5 rules violation adjudicated, he is subject to reclassification,
6 including either a determinate or indeterminate SHU term.
7 Consequently, Plaintiff's contention that he has been treated
8 differently from non-death-row prisoners because he did not
9 receive a determinate term on Grade B status is unsupported.

10 Nor do the regulations provide, as Plaintiff alleges, that a
11 non-death-row prisoner will be returned to his former housing
12 status after serving a determinate SHU term. Rather, they provide
13 that, when a determinate SHU term ends, a non-death-row prisoner
14 may continue to be retained in the SHU if, among other things, a
15 classification committee determines that "[r]elease of the inmate
16 would severely endanger the lives of inmates or staff, the
17 security of the institution, or the integrity of an investigation
18 into suspected criminal activity or serious misconduct." 15
19 C.C.R. § 3341.5(c)(3). Here, Plaintiff acknowledges that the UCC
20 explained its denial of his request to be referred to the ICC for
21 Grade A consideration as follows: "This is based on the
22 seriousness of his RVR's, DTD, 12/11/07 for Possession of Alcohol
23 and couple[d] with RVR DTD on 11/30/05 for Conspiracy to commit[]
24 the Murder of A Peace Officer. Committee feels a longer period of
25 observation on [Grade] B is needed to evaluate inmate Jackson's
26 behavior." Defs.' Ex. E. Thus, the Court finds no merit to
27 Plaintiff's contention that he has been treated differently than
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United States District Court
For the Northern District of California

1 non-death-row prisoners because Defendants have exercised
2 discretion to retain him on Grade B status.

3 Similarly, the language of the regulations does not support
4 Plaintiff's allegation that prison officials may retain on
5 indeterminate SHU status only those non-death-row prisoners who
6 are validated gang members or associates. Rather, the regulations
7 provide, "Release from segregation status shall occur at the
8 earliest possible time in keeping with the circumstances and
9 reasons for the inmate's initial placement in administrative
10 segregation." 15 C.C.R. § 3339(a). Because prison officials have
11 discretion to determine when non-death-row prisoners are eligible
12 for release from an indeterminate SHU term based on the
13 circumstances surrounding their SHU placement, Plaintiff's
14 contention, that he has been treated differently than
15 non-death-row prisoners because Defendants have exercised their
16 discretion to retain him on Grade B status, is unsubstantiated.

17 Based on the above, the Court finds Plaintiff's factual
18 deduction of differential treatment based on the language of the
19 noted regulations is unwarranted. Further, to the extent the
20 regulations do treat death row and non-death-row prisoners
21 differently, Plaintiff has not alleged facts from which an
22 inference of invidious discrimination can be drawn. See More, 984
23 F.2d at 271-72.³ Because Plaintiff's allegations fail to state a
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25 ³ Defendants further argue that, even if Plaintiff has been
26 treated differently than other prisoners to whom he is similarly
27 situated, he has alleged no facts to suggest that such differences
28 are not reasonably related to legitimate penological interests.
See Turner v. Safley, 482 U.S. 78, 89-91 (1987). The Court
declines to rule on this argument as it requires the development
of an evidentiary record.

1 claim upon which relief may be granted for an equal protection
2 violation, Defendants' motion for judgment on the pleadings is
3 GRANTED on this claim. Additionally, because the Court finds
4 amendment would be futile, the claim is dismissed without leave to
5 amend.⁴

6 CONCLUSION

7 For the foregoing reasons, the Court orders as follows:

8 1. Defendants' motion for judgment on the pleadings is
9 GRANTED.

10 2. Defendants' motion to stay discovery is DENIED as moot.

11 3. Plaintiff's motions to issue summons and for the
12 appointment of counsel are DENIED as moot.

13 This Order terminates Docket nos. 20, 21, 23 and 26.

14 The Clerk of the Court shall enter judgment and close the
15 file.

16 IT IS SO ORDERED.

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18 Dated: 1/24/2013


19 CLAUDIA WILKEN
20 United States District Judge
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25
26 ⁴ Because the motion for judgment on the pleadings is granted
27 based on Plaintiff's failure to state a due process or equal
28 protection claim, the Court does not reach Defendants' other
arguments.